

APPEAL NO. 021466
FILED JULY 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 28, 2002. The hearing officer determined that the respondent's (claimant) compensable injury of _____, includes an injury to the right foot consisting of an ulcer and cellulitis. The appellant (carrier) appealed, arguing that the hearing officer erred because the claimant's condition resulted from overuse of the right foot and that it is not part of the compensable injury as a matter of law. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that while he was walking and carrying a one-hundred-pound engine, he felt his left foot pop. The parties stipulated that the claimant sustained a compensable injury to the left foot in the form of an ankle/foot sprain/strain. The claimant stated that because he injured his left foot, he began to shift his weight to his right foot. He further stated that within two weeks after the injury he developed a blister on the bottom of his right foot, and within another two weeks the blister became ulcerated and infected, which required hospitalization. The claimant testified that he had been diagnosed with diabetes seven years prior to his left foot injury.

The hearing officer did not err in determining that the claimant's compensable injury of _____, includes an injury to the right foot consisting of an ulcer and cellulitis. As stated in Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. *per curiam*, 432 S.W.2d 515):

The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefore, causes other injuries which render the employee incapable of work.

The carrier contends that the claimant's ulcer and cellulitis conditions developed from overuse of his right foot outside of the workplace, therefore the right foot's condition is not part of the compensable injury as a matter of law. In support of its argument, the carrier cites Texas Workers' Compensation Commission Appeal No. 951627, decided November 13, 1995, in which the Appeals Panel reversed the decision of the hearing officer and rendered a decision that the condition of the "claimant's left foot [condition that was accelerated by overloading use of his left foot after his right foot injury.] is not compensable." The Appeals Panel held that the only medical evidence of causation of the left foot was based on "overload" and that such a basis was not sufficient for a compensable injury.

We note that in Appeal No. 951627, the Appeals Panel cited cases regarding “overuse” and “overloading” issues. With regard to overuse, in Appeal No. 951627, we cited Texas Workers' Compensation Commission Appeal No. 93725, decided September 28, 1993, in which the determination of a hearing officer that overuse of the right hand because of an injury to the left hand resulted in a compensable injury to the right hand was reversed because the overuse was too remote. In the present case, we note that the claimant developed blisters and ulcers to his other foot within a month. The hearing officer distinguished Appeal No. 951627, *supra*, from the present case by commenting in her Statement of the Evidence that the “Claimant’s right foot condition developed within a reasonable time frame from which Claimant began to alter his gait or shift his weight, thereby showing this is what caused Claimant’s problems.”

With regard to overloading, in Appeal No. 951627, we distinguished Appeal No. 93725, *supra*, from Texas Workers' Compensation Commission Appeal No. 93414, decided, July 5, 1993, and reversed the determination of the hearing officer that the claimant sustained a compensable injury to his left foot because the left foot condition was accelerated by “overload use of the left foot” after his right foot injury. We note that in Appeal No. 951627, *supra*, the claimant had an ongoing disease that caused the condition of his feet to become worse and that there was conflicting medical evidence. In the present case, the medical evidence supports the hearing officer’s determination. The carrier also argues that the hearing officer erred in adding “the term ‘altered gait’ to support her decision.” The hearing officer determined that “[Dr. E] and [Dr. P] opined that due to the Claimant’s left foot sprain, Claimant altered his gait shifting his weight onto the right foot causing Claimant’s compensatory neurotrophic ulcer and cellulitis of the right foot.” In Appeal No. 93414, *supra*, we affirmed a finding by a hearing officer that an injury due to an altered gait resulting from a compensable injury was itself compensable. We have also stated many times that the issue of whether a subsequent injury (sometimes referred to as a “follow-on” injury) was caused by a compensable injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993. In the present case, the hearing officer was persuaded by the medical evidence and the claimant’s testimony that he did not have problems with his feet prior to the left foot injury, and that the blisters and ulcers on his right foot developed within one month after his injury.

We have reviewed the complained-of determination. The hearing officer did not err in determining as a matter of fact that the “Claimant’s condition of neurotrophic ulcers and cellulites of the right foot is a condition naturally flowing from the compensatory weight shifting due to the Claimant’s left foot sprain of _____.” The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do find them so in this case. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER
PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Roy L. Warren
Appeals Judge